

Notice of Allowability

Application No.

10/651,840

Examiner

Natalie Pous

Applicant(s)

CARTLEDGE ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to remarks filed 4/6/07.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date See Continuation Sheet
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

(JACKIE) TAN-UYEN HO
PRIMARY EXAMINER

6/18/07

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date:
3/6/06, 11/26/04, 2/23/04, 1/29/04, 9/15/03.

DETAILED ACTION

Response to Arguments

Regarding the 112 rejections

Examiner acknowledges amendments to claims 6 and 7, thus the previous 112 second paragraph rejection is withdrawn.

Regarding Spence

Applicant's arguments, see remarks, filed 3/8/07, with respect to Spence have been fully considered and are persuasive. The 35 USC 102(e) rejections of claims 1, 5-7, 11, 14 and 24 have been withdrawn.

Regarding the 35 USC 103 rejections

Applicant's arguments, see remarks, filed 3/8/07, with respect to the combination of Spence and Ortiz, Spence and Ahmadi, Spence and Gabbay and Spence and Northrup have been fully considered and are persuasive. The 35 USC 102(e) rejections have been withdrawn.

Allowable Subject Matter

Claims 1-26 are allowed. The following is an examiner's statement of reasons for allowance:

The prior art, alone or in combination fails to teach each and every limitation as set forth by the claims. In particular, Spence fails to teach wherein an adjustable member is configured to adjust the dimensions of the implantable device over a variable range of functional dimensions. The configuration of Spence allows the adjustable member only to tighten or loosen the implantable device, and is not capable of adjusting

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the dimensions of the implantable device over a range of functional dimensions.

Therefore, dependent claims 2-26 are subsequently allowed as being dependent from an allowable independent claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie Pous whose telephone number is (571) 272-6140. The examiner can normally be reached on Monday-Friday 8:00am-5:30pm, off every 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tan-Uyen (Jackie) Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NRP
6/12/07


(JACKIE) TAN-UYEN HO
PRIMARY EXAMINER
6/18/07